

Judge Cites Dr. Lamb’s Analysis in Certifying Class of Indirect Purchasers of Branded or Generic Lovenox

In 2017, Plaintiffs filed an Amended Complaint on behalf of a proposed class of indirect purchasers of Lovenox, and/or its generic equivalent enoxaparin, alleging an agreement among Defendants to monopolize sales of enoxaparin and prevent competition by controlling patented technology used to establish sameness for purposes of obtaining FDA approval to market generic enoxaparin. Counsel for the Plaintiffs retained Dr. Russell Lamb to analyze whether it was possible to establish, using evidence common to the proposed class as a whole: the relevant antitrust product and geographic markets, and whether Defendants possessed market or monopoly power in those markets; the impact on prices paid by members of the proposed class that Plaintiffs allege arose from Defendants’ allegedly anticompetitive conduct; that all or nearly all members of the proposed class were injured by Defendants’ allegedly anticompetitive conduct; and that aggregate damages to the proposed class as a whole could be reliably calculated using standard economic methods and analyses. Dr. Lamb filed two expert reports concerning class certification issues, four expert reports concerning liability and damages issues, and two declarations in connection with Plaintiffs’ revised class definition. Dr. Lamb also testified at deposition twice concerning class certification and damages issues, and at two evidentiary hearings concerning class definition and class certification issues.

On September 20, 2019, the Court certified the proposed class of indirect purchasers, citing extensively to Dr. Lamb’s analysis of class-wide issues and testimony. For instance, in its Memorandum Opinion, the Court noted: “Dr. Lamb’s expert testimony and report are reliable because: (1) it is based on sufficient facts and data (wholesales pharmaceutical data, Defendants’ internal documents, and the case record); (2) it is grounded in reliable principles and methods (back casting and deference to economic literature); and (3) applied reasonably to the facts of the case.” The Court further noted that “Dr. Lamb’s analysis and examination of [the] evidence sufficiently demonstrates that there is common evidence capable of demonstrating the fact of antitrust impact.” Regarding the measurement of class-wide damages, the Court noted that “Dr. Lamb has produced a viable, methodologically sound opinion as to the calculation of damages.” In addition, with respect to Defendants’ motion to exclude the report and opinions of Dr. Lamb under *Daubert*, the Court stated that “Dr. Lamb’s qualifications as an expert, unchallenged by Defendants, are impressive and his opinion here is sufficiently.”

The Court’s Memorandum Opinion can be read [here](#).